

6-16-05 Hearing

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

\* \* \* \* \*  
PALESTINE MONETARY AUTHORITY  
VS.  
DAVID STRACHMAN, et al  
\* \* \* \* \*

\* CIVIL ACTION  
\* NO. 05-261L  
\*  
\* JUNE 16, 2005  
\*  
\* PROVIDENCE, RI  
\* \* \* \* \*

HEARD BEFORE THE HONORABLE RONALD R. LAGUEUX  
SENIOR DISTRICT JUDGE  
(PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION)

APPEARANCES:

FOR THE PLAINTFFS: HAIG V. KALBIAN, ESQ.  
Kalbian Hagerty, LLP  
888 17th Street  
Suite 1000  
Washington, DC 20006  
(202) 223-5600

FOR THE DEFENDANTS: DAVID J. STRACHMAN, ESQ.  
McIntyre, Tate, Lynch & Holt  
321 South Main Street  
Providence, RI 02903  
(401) 351-6095

Court Reporter: Anne M. Clayton, RPR  
One Exchange Terrace  
Providence, RI 02903

1

2

1 THE COURT: Good afternoon, everyone. The  
2 matter before the Court is Civil Action 05-261L,  
3 the Palestine Monetary Authority versus David  
4 Strachman as Administrator of the Estates of Yaron  
Page 1

6-16-05 Hearing

5 Ungar and Erfat Ungar, et al.

6 The matter is here on plaintiff's motion  
7 for a preliminary injunction.

8 Will the attorneys identify themselves for  
9 the record, please.

10 MR. SARLI: Good afternoon, your Honor.  
11 Mike Sarli for the Palestinian Monetary Authority.  
12 And I'd like to introduce your Honor to Haig  
13 Kalbian, who is counsel also for the Palestinian  
14 Monetary Authority.

15 With your permission, your Honor, he will  
16 be presenting the argument today.

17 THE COURT: All right. I've just granted  
18 his application to appear pro hac vice.

19 MR. KALBIAN: Thank you, your Honor.

20 MR. STRACHMAN: Good morning, your Honor.  
21 David Strachman for the defendant. With me is  
22 Robert Tolchin who represents the defendant in the  
23 same parallel action that was filed last Monday in  
24 New York. We also filed a motion for admission  
25 pro hac vice.

3

1 THE COURT: I've granted that.

2 MR. STRACHMAN: Thank you.

3 THE COURT: Well, I'll hear from the  
4 plaintiff's side first. Is the plaintiff  
5 presenting any evidence?

6 MR. KALBIAN: No, your Honor.

7 THE COURT: All right. You may proceed.

8 MR. KALBIAN: Thank you, your Honor.

9 Again, my name is Haig Kalbian. I'm with the law  
Page 2

6-16-05 Hearing

10 firm of Kalbian Hagerty, LLP, Washington, D.C.,  
11 and I represent the plaintiff, Palestine Monetary  
12 Authority, in this matter.

13 Your Honor, just by way of background,  
14 initially, this matter is obviously related to an  
15 underlying case that's been before your Honor for  
16 a number of years. And from the caption of the  
17 case it appears to be a case that was filed back  
18 in 2000, the Estate of Ungar against the various  
19 parties including the Palestine Authority and the  
20 PLO.

21 The reason we are here, however, your  
22 Honor, is as a result of an injunction that this  
23 court issued on May 5th of this year. And this is  
24 an injunction that was issued in the underlying  
25 case, I'll call it for ease of reference the Ungar

4

1 litigation. It was an injunction that was sought  
2 or obtained by the plaintiffs in the Ungar  
3 litigation.

4 Now, it's critical to note at the outset  
5 that the Palestine Monetary Authority was not a  
6 defendant in the Ungar litigation. Your  
7 injunction, your Honor, appears to be clear on its  
8 face. However, four days later on May 9th,  
9 counsel for the Ungar plaintiffs proceeded to  
10 prepare a document that's attached as Exhibit 2,  
11 your Honor, to the Complaint that we filed.

12 And it's important to look closely at this  
13 document. It was prepared by, as I said, by the  
14 attorney for the judgment creditors, the

6-16-05 Hearing

15 plaintiffs in the Ungar litigation. And it  
16 purports to be a notice of injunction issued  
17 pursuant to Federal Rule Civil Procedure 65(d).

18 And we would respectfully submit that this  
19 notice of injunction prepared by counsel four days  
20 after this Court issued an injunction  
21 impermissibly expanded the scope of your Honor's  
22 injunction.

23 The document purports to be issued  
24 pursuant to Federal Rule Civil Procedure 65(d).  
25 We've checked 65(d), actually checked the entire

5

1 Rule 65. I have not seen anything in the rules  
2 that permits counsel to piggyback, if you will, on  
3 an injunction and then sui sponte prepare a notice  
4 of injunction that alters, expands and radically  
5 changes, we believe, the intent of the injunction  
6 that your Honor issued on May 5th.

7 The important language in this notice of  
8 injunction, again, this is Exhibit 2 to the  
9 Complaint, appears in the middle of the page, your  
10 Honor. It says, "Take further notice that the  
11 injunction applies to all assets of the PA and the  
12 PLO how ever titled, and that assets of the PA and  
13 PLO are held and/or titled under the names" and  
14 then there's a string of entities. I don't  
15 believe any of those entities were defendants in  
16 the Ungar litigation. And the last entity  
17 mentioned is the Palestine Monetary Authority as  
18 your Honor can see.

19 Now, this statement, your Honor, is not  
Page 4

6-16-05 Hearing

20 true. As we've demonstrated in the affidavit that  
21 we've submitted by the governor of the Palestine  
22 Monetary Authority, the PMA for short, does not  
23 hold any assets of the PA or the PLO nor are the  
24 assets of the PA and PLO held or titled under the  
25 names of the PMA.

6

1 Now, equipped with this notice of  
2 injunction, counsel for the judgment creditors  
3 proceeded to serve the Bank of New York. We  
4 believe he may have served other banks as well,  
5 but for our purposes he served the Bank of New  
6 York in New York. And upon receipt of this notice  
7 of injunction along with the injunction, to be  
8 fair, the Bank of New York proceeded to freeze  
9 approximately \$30,000,000 essentially of the PMA's  
10 money. That was done on or about the 18th of May  
11 or about nine days after this notice of injunction  
12 is dated.

13 The PMA through its governor found out  
14 about this at or about the same time, May 18th.  
15 Obviously, it raised a lot of concern. The PMA  
16 tried to contact the Bank of New York to try to  
17 find out what exactly was happening. The PMA then  
18 moved as expeditiously as possible, given that the  
19 PMA is located on the other side of the globe, to  
20 get as much documentation together including this  
21 report prepared by its auditors, which is  
22 instructive, we believe. This is Exhibit 4 to the  
23 Complaint, issued by the international accounting  
24 firm of Saba and Company, which states -- and this

6-16-05 Hearing

25 is dated May 25th, which states that, in fact, the

7

1 PMA is a legal person independent of the PA and  
2 proceeds to lay out on the balance sheet of the  
3 PMA the fact that we believe is crystal clear that  
4 the PMA or that the PA and PLO assets are not held  
5 or titled in the name of the PMA, notwithstanding  
6 the notice of injunction that was issued by  
7 counsel for the judgment of creditors.

8 Events began to move rather fast. The  
9 governor of the PMA, Mr. Abed, arrived in the U.S.  
10 the weekend of Memorial Day equipped with much of  
11 this documentation, including but not limited to  
12 Exhibit number 6 -- I'm sorry, Exhibit 4 to the  
13 Complaint. And we retained counsel, myself, and  
14 my firm in Washington over the Memorial Day  
15 weekend.

16 And Tuesday after Memorial Day, we moved  
17 expeditiously to file papers in New York. We  
18 tried to file papers on Tuesday. We were  
19 unsuccessful. We tried to file some papers,  
20 actually, in the case that was open by  
21 Mr. Strachman, whereby he domesticated the Rhode  
22 Island judgment, this Court's judgment. And we  
23 were told by the clerk, well, you're not a party  
24 to that case; you need to open a new case.

25 We did that on Friday, June 3rd. On

8

1 Friday, June 6th, we appeared before a Supreme  
2 Court judge in New York, who basically referred

3 6-16-05 Hearing  
us, if you will, back to Rhode Island.

4 THE COURT: But he has the matter. He's  
5 hearing the matter.

6 MR. KALBIAN: I'm sorry?

7 THE COURT: He's hearing the matter.

8 MR. KALBIAN: He's hearing the matter.  
9 Actually, he's passed the case on to a different  
10 judge in New York. I don't know if your Honor's  
11 had a chance to look at the transcript.

12 THE COURT: I did. I read the whole  
13 transcript. I've read all the material, every  
14 word, every bit of material that you've submitted  
15 to me. And it's clear that the case is pending in  
16 the Supreme Court of New York.

17 MR. KALBIAN: Yes, your Honor. And we  
18 filed it in New York for a reason.

19 THE COURT: It was only a suggestion on  
20 his part that you come and visit with me. Whether  
21 that visit is going to be fruitful is something  
22 else again.

23 MR. KALBIAN: I understand. We took it as  
24 a strong suggestion, your Honor, and I think since  
25 the injunction and the notice of injunction

9

1 emanated from Rhode Island and as a result of the  
2 Ungar litigation, we felt that it would be best to  
3 come back before your Honor to seek --

4 THE COURT: One of the problems you have  
5 is that it seems to me an indispensable party is  
6 the Bank of New York, and it is not a party to  
7 this litigation that you have filed.

6-16-05 Hearing

8                   So I, frankly, don't know what you're  
9                   asking me to do. You're asking me to issue some  
10                  sort of a preliminary injunction, but I don't know  
11                  what that means. Do you want me to enjoin the  
12                  Bank of New York from doing something?

13                 MR. KALBIAN: No. What we'd like your  
14                 Honor to do is look at the injunction and then  
15                 look at the notice of injunction that has been  
16                 prepared.

17                 THE COURT: I have.

18                 MR. KALBIAN: And to basically deem the  
19                 notice of injunction void because it  
20                 impermissibly, we would respectfully submit,  
21                 expands the scope of the injunction and it  
22                 contains a statement that the Bank of New York  
23                 relied on, that is that the assets of the PA and  
24                 PLO are titled in the name of PMA. That simply,  
25                 your Honor, is not true.

10

1                   THE COURT: I don't know what the Bank of  
2                   New York relied on. What's clear from my  
3                   injunction is that the PA and the PLO and any  
4                   agents who are enjoined from sending any funds or  
5                   properties outside this country. Now, the Bank of  
6                   New York must have made a decision that they  
7                   thought that the PMA was an agency of the PA or  
8                   the PLO and had funds of the PA and PLO. And  
9                   therefore, they froze because otherwise they could  
10                  be held in contempt for not observing the  
11                  injunction. But the injunction runs against the  
12                  PA and the PLO and any agents.



6-16-05 Hearing

13 And that's the question I'd have to decide  
14 here. You show me that the Monetary Authority is  
15 not an agency of the PA, and you show me that the  
16 Authority has no funds belonging to the PLO or the  
17 PA.

18 MR. KALBIAN: Well, I think to address  
19 your latter part --

20 THE COURT: That's what you have to do in  
21 order to get any kind of relief from me, but  
22 still, it seems to me that any relief that I might  
23 grant you is of no consequence, because it's  
24 really the Bank of New York that has frozen these  
25 funds. And I don't know why the Bank of New York

11

1 froze these funds.

2 MR. KALBIAN: Well, we believe the Bank of  
3 New York froze the funds because of the notice of  
4 injunction.

5 THE COURT: We don't know that. And we  
6 don't have anybody here from the Bank of New York  
7 who will tell us why they acted that way and why  
8 they're concerned about this matter.

9 MR. KALBIAN: As I read the injunction,  
10 your Honor, and obviously I have not been involved  
11 in the Ungar litigation at all nor has my client,  
12 but as I read your Honor's injunction, it says,  
13 "It is hereby ordered and decreed that the PA and  
14 the Palestinian Liberation Organization and their  
15 officers, agents, servants, et cetera are hereby  
16 prohibited, restrained and enjoined from  
17 withdrawing, transferring, assigning, et cetera,

6-16-05 Hearing

18 or in any way removing or affecting a disposition  
19 directly or indirectly any and all assets of the  
20 PA and/or the PLO how ever titled."

21 So assuming arguendo without conceding  
22 that the PMA, and again we don't concede this, is,  
23 in fact, an officer, agent, servant, the fact of  
24 the matter is the PMA does not meet the second  
25 part of this injunction. And that is that the PMA

12

1 does not hold any assets of the PA and/or the PLO.

2 THE COURT: That's a question that I'd  
3 have to decide, and it seems to me it requires a  
4 good deal of evidence.

5 MR. KALBIAN: I understand, your Honor.  
6 And frankly --

7 THE COURT: I had decided off the top of  
8 my head based on the papers that I've read, it  
9 would appear to me that the Authority does have  
10 assets of the PA and the PLO because of certain  
11 transactions that were stayed here indicate to me  
12 that funds of the PA and PLO were being  
13 transferred at least through the Bank of New York  
14 to various offices or embassies, whatever they may  
15 be titled.

16 MR. KALBIAN: And you make a good point,  
17 your Honor. And if I could kind of walk you  
18 through the schedule that's attached as Exhibit 6  
19 to our papers, which is the document generated by  
20 the Bank of New York. And you see here from that  
21 schedule that the Bank of New York has apparently  
22 frozen assets belonging to the PA and the PLO

6-16-05 Hearing

23 pursuant to your Honor's injunction which they  
24 received.

25 However, they've also lumped together

13

1 other transactions involving the PMA and the PMA's  
2 name, the Palestine Monetary Authority's name is  
3 not mentioned in your injunction. It's only  
4 mentioned, your Honor, in the notice of  
5 injunction.

6 So arguably, Mr. Strachman may, in fact,  
7 be entitled to some of these funds belonging to PA  
8 and the PLO that had been ensnared or frozen by  
9 the Bank of New York. But that's not my client.  
10 My client is the Palestine Monetary Authority.  
11 And just because they show up, I would  
12 respectfully argue, on the same schedule generated  
13 by the Bank of New York as the PA and the PLO does  
14 not make them an agent or a party that is holding  
15 assets of the PA or the PLO. And all the Court  
16 has in front of it at this time is Mr. Abed's  
17 affidavit. He's the governor of the PMA, an  
18 educated gentleman, degree from University of  
19 California at Berkeley, formerly with the  
20 International Monetary Fund where he held one of  
21 the highest positions. He's given, your Honor, a  
22 sworn declaration under penalty of perjury, and if  
23 he was here, I would put him on the stand to  
24 testify. Obviously events have moved fast. He  
25 had to go back to take care of the business of the

14

1 PMA.

6-16-05 Hearing

2 But to the extent that this Court wishes  
3 to schedule a full evidentiary hearing on a  
4 preliminary injunction, we'd be delighted. In  
5 fact, I've got lined up people from U.S. Treasury,  
6 people from the Federal Reserve in New York who  
7 are willing to vouch for the fact that the PMA  
8 does not, does not hold assets of the PA or the  
9 PLO and/or assets of those entities, judgment  
10 debtors in the Ungar litigation are not titled in  
11 the name of the PMA. And that's why we're here.  
12 Suddenly went from these judgment debtors, the PA  
13 and the PLO, and without any due process, without  
14 any hearing, a notice of injunction appears that  
15 suddenly implicates my client without any hearing,  
16 without any due process. And of course, no --  
17 there's been no undertaking posted by the Ungar  
18 plaintiffs, the judgment creditors, which my  
19 reading of Rule 65 especially when you're seizing  
20 the assets of a non-party, there's irreparable  
21 harm here every day that this situation continues.  
22 It is creating potentially a chaotic situation in  
23 the Palestinian territories.

24 THE COURT: They can remedy the situation  
25 by posting a bond of \$30,000,000 in New York.

15

1 Those funds would be freed. That's the way they  
2 can get rid of this problem, and then let it be  
3 tried on the merits at some later time.

4 But the problem, the big problem I have is  
5 that I don't know why the Bank of New York acted  
6 the way they did. And they're not a party to this

6-16-05 Hearing

7 litigation. As a matter of fact, it would seem to  
8 me that the proper place for all these arguments  
9 are in New York where the judgment has been  
10 registered and where this action has been taken in  
11 order to collect the judgment. And it is pending.  
12 It's pending in the Supreme Court of New York with  
13 all the parties before that court, and it's not a  
14 question of the interpretation of my order. My  
15 order is clear. What has to be determined now are  
16 facts. And maybe you're prepared to present those  
17 facts, but it seems to me they ought to be  
18 presented to the Supreme Court judge in New York.

19 MR. KALBIAN: Well, obviously that --

20 THE COURT: Even if you prove what you say  
21 you could prove here, that there are no funds of  
22 the PA or PLO involved in this \$30,000,000, the  
23 fact of the matter is it's the Bank of New York  
24 that froze, and I don't know why they froze.

25 MR. KALBIAN: I can represent to the Court

16

1 that I've had conversations with counsel for the  
2 Bank of New York, and they've told me they relied  
3 on the injunction, the notice of injunction  
4 prepared by the attorney for the judgment  
5 creditors, and a restraining order issued by a  
6 court in New York that mirrors, essentially, the  
7 language of the notice of injunction.

8 So if you take it back, the problem I  
9 would respectfully submit is this notice of  
10 injunction. That triggered the whole sequence of  
11 events. And I believe that this court is best

6-16-05 Hearing

12 placed respectfully to look at its injunction, to  
13 look at this notice of injunction and see that the  
14 two don't add up, don't match up.

15 THE COURT: Well, they don't. Of course  
16 they don't. But the question is, the question  
17 is -- the two questions that I posed. Number one,  
18 is the Palestine Monetary Authority an agency of  
19 the PA or the PLO. On the face, it looks like it  
20 is. It was created by Yassar Arafat in both  
21 capacities as the head of the PA and as the head  
22 of the PLO.

23 MR. KALBIAN: It was actually created by  
24 the PLO and by the Israelis as a result of the  
25 Oslo Accords.

17

1 THE COURT: It doesn't matter what caused  
2 it to be created. It was created by the Palestine  
3 Authority as an agency of the Palestine Authority.  
4 And then the next question is do they hold funds  
5 of the PLO or the PA? You say no.

6 MR. KALBIAN: Absolutely.

7 THE COURT: And I don't know that. That  
8 would have to be proven to me. And I'm suggesting  
9 that maybe the best place to prove that is in the  
10 Supreme Court of New York --

11 MR. KALBIAN: But I would respectfully --

12 THE COURT: -- where the Bank of New York  
13 is a party. It is not a party here.

14 MR. KALBIAN: I'd respectfully submit to  
15 you that the record as it stands now is such that  
16 you have the George Abed affidavit, and that's

6-16-05 Hearing

17 unrefuted, your Honor. And if you look at the  
18 Abed affidavit --

19 THE COURT: There may be some questions of  
20 credibility there. I've read it. And it seems to  
21 me that, number one, it's all hearsay, because he  
22 just came on board a short time ago. So he can't  
23 testify as to what happened when this was created,  
24 whether any funds of the PA were used as capital  
25 to capitalize this operation. He makes a

18

1 statement that somehow the funds came out of the  
2 air, came out as a result of profits.

3 MR. KALBIAN: Out of interest income,  
4 exactly, generated by the PMA.

5 THE COURT: Well, it seems to me there has  
6 to be a fund to begin with for some company to  
7 start operating or some entity to start operating.  
8 So I have some serious questions about that. I'd  
9 like to see him cross-examined. I'd like to ask  
10 him some questions.

11 MR. KALBIAN: Your Honor, I would be  
12 delighted to bring him here. I think he makes a  
13 very credible witness, as I've said. I've got  
14 people who are in Treasury, in the U.S. Treasury  
15 Department now and who were formerly with Treasury  
16 who assisted and have given technical assistance  
17 to the PMA who have personal knowledge as to the  
18 declarations made in the affidavit, the statements  
19 made in the affidavit.

20 THE COURT: All right.

21 MR. KALBIAN: This PMA, if I may conclude,  
Page 15

6-16-05 Hearing

22 your Honor, briefly, the law that's attached to  
23 the papers, I think it's attached to Mr. Abed's  
24 affidavit.

25 THE COURT: I saw it. I've read it all.

19

1 MR. KALBIAN: For example, it says that  
2 the PMA shall hold currency or gold reserves of  
3 the Palestine Authority.

4 Well, the fact of the matter is the  
5 Palestinians don't have their own currency. It's  
6 not a sovereign state so these things have not  
7 happened. This law was created back in '93. The  
8 events on the ground have been such since '93 that  
9 most of the elements or articles in this law that  
10 created the PMA created by the Israelis and by the  
11 PLO have not happened.

12 For example, the PMA is not the fiscal  
13 agent for the PA.

14 THE COURT: I understand those things. I  
15 understand. I just spent the last five years  
16 making a determination that the PA and the PLO did  
17 not have sovereign immunity. And now I hear  
18 arguments that are exactly that. They are not  
19 sovereign. And it's taken all those years to  
20 determine that. What we've had is a great  
21 run-around in this case from the people  
22 representing the Palestinian Authority and the  
23 PLO.

24 MR. KALBIAN: Those are not my clients,  
25 your Honor.

20



6-16-05 Hearing

1 THE COURT: I understand that. And I  
2 understand that there is a judgment here against  
3 the PA and the PLO for \$116,000,000, also against  
4 the Hamas for that amount. And the plaintiffs in  
5 the Ungar case are trying to collect. They're  
6 going around trying to find out where these assets  
7 are held.

8 MR. KALBIAN: And apparently, they've been  
9 able to snare from the schedule of the Bank of New  
10 York some funds of those judgment debtors at the  
11 Bank of New York. We're not --

12 THE COURT: And that's where this case  
13 belongs, because I've done my job. I've entered  
14 the judgment. There are no funds in Rhode Island.  
15 I just refused yesterday to appoint a receiver.  
16 And Mr. Strachman will have to go to New York,  
17 Washington and other places and institute  
18 proceedings there to collect on the judgment. And  
19 that's where this litigation belongs at this  
20 point.

21 MR. KALBIAN: But, I think, your Honor,  
22 respectfully, if your Honor would give some  
23 clarity to this injunction, if your Honor would  
24 look at the notice of injunction that  
25 Mr. Strachman is using to piggy-back on and go to

21

1 all these jurisdictions, what could potentially  
2 happen is you'd have 50 different lawsuits in 50  
3 different states.

4 However, if your Honor would hold an

6-16-05 Hearing

5 evidentiary hearing, where I believe, and I would  
6 respectfully submit we can make it crystal clear  
7 to this Court that this notice of injunction is  
8 void, it is an impermissible expansion of your  
9 Honor's injunction.

10 THE COURT: If I rule that, that's not the  
11 end of the matter. Even if I make that ruling  
12 right now today, it's not the end of the matter.  
13 It's just the beginning of the matter.

14 MR. KALBIAN: If I read what the New York  
15 judge said on June 3rd, his first reaction was why  
16 are you here. Go get clarification from the  
17 judge, the federal judge in Rhode Island who  
18 issued this. So --

19 THE COURT: My injunction is absolutely  
20 clear.

21 MR. KALBIAN: No doubt about it.

22 THE COURT: And this procedure is now in  
23 New York. It's in New York because the judgment  
24 was registered there, and there are proceedings to  
25 collect on that judgment. There are proceedings

22

1 to reach funds and assets of the PLO and the PA.  
2 And that's where this case belongs. And whatever  
3 I say about this at the moment is really  
4 superfluous, because the Bank of New York can do  
5 whatever it wants about freezing funds. If it is  
6 frightened about being held in contempt or  
7 whatever reason, they can freeze those funds. And  
8 that's obviously what they did.

9 But wholly apart from the notice, my

6-16-05 Hearing

10 injunction is clear. If the Palestine Monetary  
11 Authority is an agency of the PA or PLO and it  
12 holds funds of the PA or PLO, it is subject to  
13 that injunction.

14 MR. KALBIAN: But it doesn't hold funds of  
15 the PA and PLO.

16 THE COURT: That's a question of fact that  
17 has to be determined, and I am not in a position  
18 to determine that. And what I'm suggesting is  
19 those facts should be determined in the Supreme  
20 Court of New York where this proceeding is  
21 pending. I read the judge's comments. He wants  
22 to throw it back to me. Well, it's not the first  
23 time that a judge is sort of passing the buck.  
24 And this is where this proceeding is. It's in the  
25 Supreme Court of New York at the moment.

23

1 Frankly, I think that's a mistake on  
2 plaintiff's part. It should be in the Southern  
3 District of New York, the judgment should have  
4 been registered there. This should be a federal  
5 case where it belongs. But the fact of the matter  
6 is if you want to spend time here in this court  
7 bringing witnesses from all over the world, I will  
8 accommodate you.

9 MR. KALBIAN: We're ready to do that, your  
10 Honor.

11 THE COURT: The point is that I'm going  
12 away tomorrow morning, and I won't be back until  
13 July 6th, and I'll only be in for one day at that  
14 time. And then I have one week, the week of July

6-16-05 Hearing

15 11th that I will be here. And I have several  
16 matters down for that week, which require  
17 evidentiary hearings and other matters. But I  
18 will schedule it that week, and you can bring all  
19 the witnesses. You see most of the time when I  
20 hear a motion for preliminary injunction, I  
21 require testimony. I'm not going to decide things  
22 off the top of my head.

23 MR. KALBIAN: I understand. If your Honor  
24 recalls, I think it was yesterday when this  
25 particular hearing was set. Obviously, had we had

24

1 the luxury of time -- and that's what we're hoping  
2 to do. However, in the meantime, your Honor, I  
3 would respectfully request that the Court order  
4 these judgment creditors to post a surety, because  
5 if they're wrong, and we believe that they're  
6 wrong, damages are being incurred. Damage is  
7 being incurred by the PMA.

8 If you look at the Rule 65, your Honor, it  
9 makes it very clear, I would submit, that an  
10 injunction to be issued there needs to be a bond  
11 or some sort of an undertaking. And --

12 THE COURT: I don't think it's appropriate  
13 in this case. It's your client that has to put up  
14 a bond to free those funds right now. That's the  
15 way out for your client.

16 MR. KALBIAN: We're ready to do that, your  
17 Honor. If your Honor orders that, we're ready to  
18 post and --

19 THE COURT: That belongs in New York.

6-16-05 Hearing

20 It's not before me. Now, if you want to have a  
21 full-blown hearing on a preliminary injunction in  
22 this case, I'll give it to you.

23 MR. KALBIAN: Thank you, Judge.

24 THE COURT: I don't guarantee there's  
25 going to be any favorable result to you as a

25

1 result of that.

2 MR. KALBIAN: I understand.

3 THE COURT: But I'll give you the hearing,  
4 and then we'll see where we go from there. And I  
5 suggest to you that there's an indispensable party  
6 that is not a party in this case, and that's the  
7 Bank of New York. Bank of New York is a party to  
8 the Supreme Court action in New York. And so I'm  
9 suggesting that's the most appropriate place to  
10 get these matters resolved. I have a very full  
11 schedule.

12 I haven't heard from Mr. Strachman yet, so  
13 let me hear from him what his positions are on  
14 these matters, and then I'll make a final  
15 determination of when I set this down for hearing  
16 on preliminary injunction.

17 MR. KALBIAN: Thank you, Judge.

18 MR. STRACHMAN: Good afternoon. Thank  
19 you, your Honor. There are a few points I'd like  
20 to raise. First, there is absolutely no  
21 justification or basis for this case being here.  
22 There is no subject matter jurisdiction in this  
23 case at all. The case is between PMA, an agency  
24 of PA and an estate, my client, and my main

6-16-05 Hearing

25 clients who are thankfully alive who live in

26

1 Israel. As this Court knows, over five years of  
2 litigation, Yaron Ungar is not a citizen of any  
3 state of the United States. Neither are the other  
4 defendants in this case, the plaintiffs in the  
5 initial case.

6 So this is a case between two foreign  
7 entities. There's no subject matter jurisdiction  
8 in this case. It says very clearly in 1332, my  
9 brother cites the wrong subsection where he refers  
10 to a domiciliary of the United States. There is  
11 none. The end of the statute says very clearly,  
12 it's in Section (c)(2). It says very clearly that  
13 when you sue an estate or administrator, you look  
14 to the citizenship of the domiciliary of the  
15 deceased. And as we know from five years of  
16 litigation here, that was in Israel.

17 So there's no subject matter jurisdiction  
18 over this case.

19 Second of all, my brother is now asking  
20 for basically a third bite at this apple. While  
21 this case was pending, while the case was on  
22 appeal and had not yet -- mandate had not issued,  
23 under the Hustler versus Keeton rule, we could not  
24 go to Federal Court. So we domesticated the  
25 judgment in state court consistent with the Second

27

1 Circuit's ruling in Hustler versus Keeton. We did  
2 that.

3 And on April 21, before the preliminary

6-16-05 Hearing

4 injunction that my brother complains of, three  
5 weeks before that, we domesticated the judgment  
6 there, and we sought a statutory restraining  
7 notice. In New York under New York law, there's a  
8 statutory restraining notice that creditors can  
9 file. And I filed a copy of the one that we filed  
10 of April 21. And that's in document number 5.

11 What prevents this money from being  
12 released is that restraining notice. And in  
13 document number 6 is, in the documents I provided  
14 to the Court this afternoon, is the response of  
15 the bank in the case of Estate of Yaron Ungar  
16 versus Palestine Authority. In that case, in that  
17 state domestication case, these funds are being  
18 held. Not because of this restraining order, but  
19 because of the restraining notice that was issued  
20 in New York.

21 So the defendants had an opportunity, the  
22 plaintiffs here, rather, had an opportunity to go  
23 into court there and say we are an aggrieved  
24 party; we want to be heard in this action, and  
25 they failed to do so.

28

1 What they did is a week and a half ago  
2 file a separate suit, a suit against -- they had  
3 the audacity to sue these victims in state court  
4 in a separate action. They don't bring to the  
5 Court's attention the fact that there was a  
6 restraining notice in a parallel action. They  
7 sort of skip over it here, too, by the way.  
8 That's a separate matter that's not really brought

6-16-05 Hearing

9 to the Court's attention. They bring a separate  
10 suit. In that suit, as your Honor knows from  
11 reading the transcript, the judge set a discovery  
12 schedule and a briefing schedule.

13 By the end of June, this matter is going  
14 to be briefed. It's going to be concluded in New  
15 York, and they would have us now have a second  
16 bite at the apple up here in Rhode Island. It's  
17 already engaged. Both counsel who were in New  
18 York were at that hearing are here today. So  
19 there's no need for this. This is superfluous.  
20 This is a way to try to bully their way into a  
21 ruling that they didn't like last Monday when the  
22 judge said to them there is no irreparable harm,  
23 I'll set it down for a schedule. That's when, by  
24 the way, as the Court knows Mr. Abed was present,  
25 and he saw fit to show up last week in New York.

29

1 And he showed up and he testified, and he gave his  
2 spiel just as he did in his affidavit. Of course,  
3 he was unable to come to Court today, and we can't  
4 cross-examine him.

5 But that matter is already underway. And  
6 to come to this Court now to file two separate  
7 actions against these victims and to cause us to  
8 litigate these issues when they're already being  
9 litigated in the very first proceeding that was  
10 filed at least I think it was April 20th but that  
11 restraining notice was April 21 is absurd.

12 And now what you're going to have if the  
13 Court grants a hearing in this matter in July,



6-16-05 Hearing

14 we'll have two separate proceedings on this very  
15 same complaint, virtually identical allegations,  
16 as well as the third and original really first  
17 proceeding, which is the turn-over proceeding that  
18 we filed in the domestication action. It's an  
19 absurdity. It's turning this into another circus,  
20 and we're going to be here for another five years  
21 in three different courts with the continued sort  
22 of shell game that we've seen with the Palestinian  
23 Authority and the PLO the way they litigate  
24 matters.

25 So I would urge the Court to take the bull

30

1 by the horns in this case and to dismiss this  
2 action. Your Honor said very clearly in the  
3 receivership motion that we filed that collection  
4 actions are not to proceed here in Rhode Island  
5 but to proceed in the various jurisdictions. They  
6 now are begging us to take other action in a sense  
7 here. We'll be litigating all of these claims now  
8 by any claimant, by any alleged third party here  
9 in Rhode Island. Just the opposite of what you  
10 said yesterday you weren't going to do and weren't  
11 going to allow the plaintiffs to do.

12 I would also ask the Court to disregard  
13 any of the allegations in Mr. Abed's affidavit. I  
14 know that effectively you're not granting the  
15 relief today, but I want it to be clear, and I  
16 just want to mention very clearly for the Court  
17 the documents that we provided, because it says  
18 very clearly everything that your Honor just said

6-16-05 Hearing

19 about the nature of the PMA and their source of  
20 authority and their genesis, if you will.

21 We have letters from Mr. Abed, one to me,  
22 one to someone else on effectively Palestine  
23 National Authority stationery indicating clearly  
24 that the PMA is an agency, subdivision, et cetera,  
25 of that agency.

31

1 We have in document number three, which I  
2 provided and attached for the Court, the Oslo  
3 Accord, which says very clearly that the PA is  
4 going to act as the sole financial agent of the  
5 PA. The PMA, I think I misspoke. The PMA is the  
6 sole financial agent locally and internationally.  
7 That exact same language is carried over into the  
8 document attached to Mr. Abed's affidavit and also  
9 that I provided, which is effectively the charter  
10 for the PMA.

11 It says in several places, and I've  
12 highlighted all those sections, the exact same  
13 type of language. They're the guys holding the  
14 money for the PA and the PLO. And then we also  
15 know from the litigation here and on previous  
16 occasions in a different context we provided to  
17 the Court a copy of a restraining order that was  
18 entered in the International Technologies case  
19 against the PLO.

20 In that very case, similarly, these  
21 a/k/a's of the PA and the PLO, a whole laundry  
22 list of them, were restrained by the Court exactly  
23 for this type of reason. And that's, in fact, how

6-16-05 Hearing

24 we got some of these names. And we disclosed this  
25 to the Court years ago, where for a variety of

32

1 other reasons we brought this information to the  
2 Court's attention.

3 Then on the bottom of the list it says  
4 very clearly that that judge restrained the  
5 Palestine Monetary Authority. And the piece de  
6 resistance, if you will, is the fact that Judge  
7 Martin ruled very clearly in his decision that was  
8 upheld by your Honor, that was not objected to,  
9 this portion of the decision was not objected to  
10 by the defendants, the PA and the PLO, and was not  
11 appealed by them, and that is that the PMA is a  
12 financial arm of the PA and the PLO.

13 So we have overwhelming evidence to  
14 suggest that there's a tremendous credibility  
15 problem with Mr. Abed's statements. And that what  
16 he's saying about the nature of their authority,  
17 even if he were allowed to testify as an expert in  
18 foreign law, which he isn't; he's an economist,  
19 even if he was here and was willing to be  
20 cross-examined.

21 But then we take a look at, if I could for  
22 just a moment, your Honor, if we look at the  
23 documents that are in Item 5, Tab 5 of the  
24 materials -- excuse me, Tab 6 of the materials  
25 that we provided, if we look at the very accounts

33

1 that are in question as your Honor indicated

6-16-05 Hearing

2 before, these are transfers virtually exclusively  
3 between and on behalf of the PA, the PLO and in  
4 large measure the Palestinian Monetary Authority.

5 And if we look at the statement, it says  
6 very clearly from the bank, the originator,  
7 meaning the guy who wrote the check, not the guy  
8 who washed the money, but the guy who wrote the  
9 check is the Palestine Monetary Authority. It's  
10 their money. It's the money that they got. And  
11 their charter says if they have profits, they go  
12 to the PMA -- PA rather. If they have  
13 deficiencies, they have to be made up by the PA.

14 These are the very funds that they are  
15 holding on behalf of the PA and the PLO. They  
16 have 57 entries. The overwhelming majority of  
17 entries here are directly described as PA or PLO  
18 money. The other amounts are very clearly, as we  
19 presented here, very clearly significantly  
20 evidence belong to the PA. The PA itself is  
21 nothing more than an agency.

22 So I would ask the Court to dismiss this  
23 case. There's no jurisdiction.

24 THE COURT: There's no motion to dismiss.  
25 There's no motion to dismiss at this point, and

34

1 all that's before the Court is a motion for a  
2 preliminary injunction. And my inclination is to  
3 set that motion for preliminary injunction down  
4 for an evidentiary hearing, and then I'll make  
5 determinations. If you want to file a motion to  
6 dismiss for lack of jurisdiction, maybe that will

6-16-05 Hearing

7 take precedence before I hear this matter, and  
8 maybe this matter will be gone.

9 But as of the moment, I don't hold out  
10 much hope that there will be any kind of  
11 preliminary injunction issued in this case. So  
12 maybe the parties are just spinning their wheels  
13 here.

14 MR. STRACHMAN: The concern that I have,  
15 Judge, the wheels have already started rolling in  
16 New York.

17 THE COURT: That's where the case belongs.  
18 I will tell you right now that's where the case  
19 belongs. It's a New York case at this point. And  
20 what funds are frozen are frozen in New York.  
21 They're frozen pursuant to New York court  
22 authority, and it's a New York judge that will  
23 have to make a determination on this matter.

24 It appears to me that any determination  
25 that I make is really academic in this case, and

35

1 probably this case will be dismissed. But for the  
2 time being, I will give the plaintiff an  
3 opportunity to have an evidentiary hearing. We  
4 may be wasting our time, but we'll see. I'd like  
5 to hear the evidence, to be perfectly frank, so  
6 that I am certain that also factually I'm  
7 satisfied what occurred here.

8 MR. STRACHMAN: So to be clear, your Honor  
9 is not in any way issuing an order with respect to  
10 the New York proceedings.

11 THE COURT: Absolutely not.

6-16-05 Hearing

12 MR. STRACHMAN: And those will continue on  
13 as already --

14 THE COURT: Whatever New York state courts  
15 did, that's within their jurisdiction. What I  
16 have before me now is this case that was filed  
17 requesting a temporary restraining order and  
18 preliminary injunction. I've denied the temporary  
19 restraining order. I will hold in abeyance any  
20 determination on the request for a preliminary  
21 injunction and hold an evidentiary hearing.  
22 That's as far as we go at this point.

23 MR. STRACHMAN: In light of that, then,  
24 Judge, we'd like to have an order with respect to  
25 discovery so that we're not surprised here as to

36

1 who these witnesses are who are coming here. We'd  
2 like to have them disclosed to us, and we'd like  
3 to have an opportunity to examine them in advance  
4 as well as any other filings that they make.

5 THE COURT: I don't think that we can do  
6 that in the time allotted to us. If at the time  
7 of the evidentiary hearing after these witnesses  
8 have testified, if you think you need more time, I  
9 will give you more time. We'll take as much time  
10 as we need to get to the bottom of this and get to  
11 the facts. But again, my concern is that this is  
12 all going to be academic.

13 MR. STRACHMAN: Because the concern that I  
14 have, Judge, is that we face conflicting rules  
15 over these very same accounts, identical accounts  
16 that as your Honor indicated are really not

6-16-05 Hearing

17 subject to the Court. They're really in another  
18 jurisdiction. And I'm also concerned that we'll  
19 be in a situation where we have the plaintiffs  
20 here, the PMA trying to effectively disrupt the  
21 proceedings that were already in place in New York  
22 on basically one foot and having people come in  
23 here without discovery, without advanced  
24 knowledge, without information having to litigate  
25 where the remaining it's about \$13,000,000 that's

37

1 being held in these 57 accounts, where that money  
2 is and who owns it in advance of what was already  
3 started in New York.

4 So they've had -- if we go forward here,  
5 they will be given the opportunity to disrupt that  
6 after the Court has already indicated we should be  
7 in these foreign states and without the benefit of  
8 discovery, without the benefit of all the tools of  
9 litigation that my client should be afforded. I  
10 think that's a problem with your Honor's attempt  
11 to accommodate this motion with a hearing.

12 THE COURT: Well, it may be a problem, but  
13 it's one that we'll have to work through. Maybe  
14 this whole problem will be solved if you file a  
15 motion to dismiss. I may dismiss the case before  
16 I have a hearing.

17 MR. STRACHMAN: I ask then that you enter  
18 a schedule for that, Judge, so that we have some  
19 sort of structure as to when the motions are filed  
20 and response and reply.

21 THE COURT: We have our rules that apply.

6-16-05 Hearing

22 And what I'm going to do is schedule this for an  
23 evidentiary hearing on the plaintiff's motion for  
24 a preliminary injunction. And I'm going to  
25 schedule it for Thursday, July 14, 2005 at 2:00

38

1 p.m. for an evidentiary hearing. And the case  
2 will take its course. I'm not entering any other  
3 orders at this time.

4 MR. KALBIAN: With respect to planning,  
5 Judge, for that hearing, if we file a motion and  
6 have a motion --

7 THE COURT: If you file a motion to  
8 dismiss, I will hear it before the hearing. And I  
9 if I decide to grant it, then that will be the end  
10 of the matter.

11 MR. STRACHMAN: So just so I understand,  
12 you're saying in advance of the 14th or on the  
13 14th?

14 THE COURT: On the 14th.

15 MR. KALBIAN: Your Honor, obviously we'd  
16 want enough time to file any opposition briefs.

17 THE COURT: Certainly.

18 MR. KALBIAN: To the extent Mr. Strachman  
19 files his papers on the 10th of July, obviously we  
20 would need time to respond.

21 THE COURT: Do you plan to file a motion  
22 to dismiss?

23 MR. STRACHMAN: We do, Judge.

24 THE COURT: When do you want to file it?

25 MR. STRACHMAN: I'd like to file it I

39



6-16-05 Hearing

1 guess on Monday or Tuesday, Judge.

2 THE COURT: This Monday or Tuesday?

3 MR. STRACHMAN: Yes.

4 THE COURT: All right. What have we got  
5 for a date here. I'll give you until Tuesday, the  
6 21st. You'll have until June 21 to file a motion  
7 to dismiss. How much time do you want to answer?

8 MR. KALBIAN: We could put our papers in  
9 on or before the 30th of June.

10 THE COURT: All right. Any objection?

11 MR. STRACHMAN: No, Judge.

12 THE COURT: Memoranda will be filed by  
13 June 30. And when I get back on July 6th, I'll  
14 look over the papers, and maybe I could set that  
15 down for hearing separately.

16 MR. STRACHMAN: I think that will helpful,  
17 Judge, in terms of possibly bringing people in.

18 THE COURT: I just have limited time  
19 available to me right now, because I'm going to be  
20 away for two weeks, and then I'm coming back for  
21 one day to supposedly impanel a criminal jury.  
22 And then I was planning to have that criminal jury  
23 trial during that week of July 11th, but I'm not  
24 certain that trial will go forward at that time,  
25 and that's why other things have been scheduled.

40

1 Following that week, I'm away for the rest  
2 of the summer. I'm not back here until after  
3 Labor Day. I'm a senior judge now. I can take as  
4 much time as I want.

5 MR. STRACHMAN: It's deserved. Thank you.

6-16-05 Hearing

6 THE COURT: It's one of the advantages of  
7 being a senior judge. When you're working for  
8 nothing, you can take time off.

9 MR. STRACHMAN: Thank you, your Honor.

10 THE COURT: All right. Are we all on the  
11 same track now?

12 MR. KALBIAN: Yes, your Honor.

13 THE COURT: Got all those dates?

14 MR. KALBIAN: Yes.

15 MR. STRACHMAN: Thank you.

16 MR. KALBIAN: Thank you.

17 THE COURT: All right.

18 (Court concluded at 3:00 p.m.)

19

20

21

22

23

24

25

□

C E R T I F I C A T I O N

I, Anne M. Clayton, RPR, do hereby  
certify that the foregoing pages are a true and  
Page 34

6-16-05 Hearing

accurate transcription of my stenographic notes in  
the above-entitled case.

Anne M. Clayton, RPR

---

Date